JH Capital Services Sdn Bhd v Pentadbir Tanah Daerah Petaling

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(A)-134–03 OF 2019
HAMID SULTAN, KAMARDIN HASHIM AND HANIPAH FARIKULLAH JJCA
27 FEBRUARY 2020

Land Law — Acquisition of land — Compensation — Dissatisfaction and objections over amount of compensation awarded by land administrator — High Court allowed appellant's objection in part — Whether current market value and potentialities of land was considered by High Court — Whether amount of compensation adequate — Land Acquisition Act 1960 s 37

This was an appeal in respect of a land reference under s 37 of the Land Acquisition Act 1960 ('the Act') heard and decided by the learned High Court judge at Shah Alam, Selangor. The appellant was the registered proprietor of a piece of land ('the land'). The appellant's land was subject to acquisition under the Act for the purpose of constructing the third Light Rapid Transit Line ('LRT 3'). After conducting an enquiry, the land administrator awarded compensation in the sum of RM1,568,156.85. The appellant objected to the amount of compensation awarded and contended that the compensation awarded was inadequate on the grounds that the land administrator had failed to consider, amongst others, the land was purchased at a price of RM10,749,360 (principle of equivalence), potentialities, business compensation, relocation basis, extinguishment basis and replacement costs basis. The learned High Court judge sat with two assessors allowed the appellant's objection in part in respect of the current market value of the land and an additional award for the sum of RM1,314,000 to be paid to the appellant. Other claims by the appellant was rejected. Dissatisfied with the decisions of the High Court, the appellant appealed to this court.

Held, dismissing the appeal with costs of RM10,000 and affirming the order of the High Court:

(1) The appellant's appeal hinged on the amount of compensation. The burden was on the appellant to make out a prima facie case of inadequate award. Only when the appellant succeeded in doing so would the respondent be called upon to introduce their evidence; otherwise the appellant's case must fail and the land administrator's award should stand (see paras 17–18).

(2) The current market value based on the comparable transactions was

considered and accepted by the judge. The learned judge did aware and had considered about the proposed future development of the land. The learned High Court judge did not err in his findings. The appellant's objection and appeal to this court was nothing but purely on the issue of quantum of compensation (see paras 24–25).

[Bahasa Malaysia summary

Ini adalah rayuan berkenaan dengan rujukan tanah di bawah s 37 Akta Pengambilan Tanah 1960 ('Akta') yang didengar dan diputuskan oleh hakim Mahkamah Tinggi yang bijaksana di Shah Alam, Selangor. Perayu adalah pemilik sebidang tanah ('tanah'). Tanah perayu tertakluk kepada pengambilan di bawah Akta dengan tujuan membina Laluan Light Rapid Transit ketiga ('LRT 3'). Setelah menjalankan siasatan, pentadbir tanah memberikan pampasan berjumlah RM1,568,156.85. Perayu membantah jumlah pampasan yang diberikan dan berpendapat bahawa pampasan yang diberikan tidak mencukupi dengan alasan pentadbir tanah gagal mempertimbangkan, antara lain, tanah tersebut dibeli dengan harga RM10,749,360 (prinsip kesetaraan), potensi, pampasan perniagaan, asas penempatan semula, asas penghapusan dan asas kos penggantian. Hakim Mahkamah Tinggi yang bijaksana bersidang dengan dua orang penilai membenarkan sebahagian bantahan perayu berkenaan dengan nilai pasaran tanah semasa dan award tambahan untuk jumlah RM1,314,000 yang akan dibayar kepada perayu. Tuntutan lain oleh perayu ditolak. Tidak berpuas hati dengan keputusan Mahkamah Tinggi, perayu merayu ke mahkamah ini.

Diputuskan, menolak rayuan dengan kos RM10,000 dan mengesahkan perintah Mahkamah Tinggi:

(1) Rayuan perayu bergantung pada jumlah pampasan. Beban ditanggung oleh perayu untuk membuktikan satu kes prima facie bahawa award tidak mencukupi. Hanya apabila perayu berjaya melakukannya, responden akan diminta untuk mengemukakan keterangan mereka; jika tidak, kes perayu mesti gagal dan award pentadbir tanah akan kekal (lihat perenggan 17–18).

(2) Nilai pasaran semasa berdasarkan transaksi yang setanding dipertimbangkan dan diterima oleh hakim. Hakim yang bijaksana itu sedar dan telah mempertimbangkan tentang cadangan pembangunan tanah pada masa hadapan. Hakim Mahkamah Tinggi yang bijaksana tidak terkhilaf dalam penemuannya. Bantahan dan rayuan perayu ke mahkamah ini hanyalah untuk isu kuantum pampasan (lihat perenggan 24–25).]

Cases referred to

Malakoff Bhd v Pemungut Hasil Tanah Seberang Perai Utara, Butterworth [2005] 2 MLJ 229; [2005] 1 CLJ 365, FC (refd)

Ng Tiou Hong v Collector Of Land Revenue, Gombak [1984] 2 MLJ 35; [1984] 1 CLJ Rep 289, FC (refd)

Ong Yan & Anor v Collector of Land Revenue, Alor Gajah, Malacca [1986] 1 MLJ 405 (refd)

Pentadbir Tanah Daerah Kota Tinggi v Siti Zakiyah bte Sh Abu Bakar & Ors [2006] 2 MLJ 426; [2005] 4 CLJ 630, FC (refd)

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case [2017] 3 MLJ 561; [2017] 5 CLJ 526, FC (refd)

Legislation referred to

Federal Constitution art 13

Land Acquisition Act 1960 ss 12, 37, 38, 40D, Form N

Appeal from: Land Reference No BA-15–194–06 of 2018 (High Court, Shah Alam)

Manpal Singh Sachdev (Tan Weng Hung with him) (Manjit Singh Sachdev, Mohammad Radzi & Partners) for the appellant.

Etty Eliany Tesno (Assistant State Legal Adviser) for the respondent.

Kamardin Hashim JCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal in respect of a land reference under s 37 of the Land Acquisition Act 1960 ('the Act') heard and decided by the learned High Court judge at Shah Alam, Selangor vide Land Reference No BA-15–194–06 of 2018 on 23 February 2019. The appellant was not satisfied with the award given by the land administrator and has accepted the award under protest.

[2] At the High Court, the award was increased by the learned High Court judge sitting with two assessors. Dissatisfied with the decisions of the High Court, the appellant appealed to this court.

[3] We heard the appeal and after hearing the parties, we dismissed it with costs. We now give our reasons.

BRIEF FACTS

[4] The appellant was the registered proprietor of a piece of land held under HS(D) 102165, PT 15978 (Lot 52777), Mukim of Damansara, District of

Petaling, Selangor Darul Ehsan ('the said land'). The said land was located in an area known as the Glenmarie Industrial Park, situated at the junction between Persiaran Kerjaya and Jalan Kerjaya.

[5] The said land has an area of about 2,628 sqmt or 28,288 sqft with a freehold title catagorised as commercial building.

[6] The appellant's land was subject to acquisition under the Act for the purpose of constructing the third Light Rapid Transit Line ('LRT 3') between Bandar Utama, Petaling Jaya and Johan Setia, Klang. The declaration of intended acquisition was *gazetted* on 23 February 2017.

[7] The land administrator conducted an enquiry pursuant to s 12 of the Act on 31 October 2017 to determine the amount of compensation payable to the appellant. At the conclusion of the enquiry, the land administrator awarded compensation in the sum of RM1,568,156.85. The amount comprises of RM497,000 being the value of the land acquired (2,628 sqmt at RM4,500 per sqmt equal RM11,826,000 minus RM11,329,000 paid to bank as chargor), RM300,000 being compensation for loss of rental income suffered from the termination of the tenancy agreement with two tenants and RM771,156.85 being compensation for acquiring a new site and expenses incurred for mobilisation to the new site. Further sum of RM3,746,346 was paid to the first tenant, Kemas Maju Motor Sdn Bhd and sum of RM2,079,490 was also paid to the second tenant, Sadra Motor Sdn Bhd.

[8] The land administrator in his award dated 31 October 2017, expressly stated that:

> Nilaian tanah oleh pihak JPPH ialah sebanyak RM4,500.00 semeter persegi. Manakala pihak penilai yang dilantik oleh tuan tanah menuntut nilaian sebanyak RM7,535.00 semeter persegi. Berdasarkan kepada kedua-dua laporan nilaian tersebut, saya memutuskan untuk memberi nilaian sebanyak RM4,500.00 semeter persegi iaitu sama dengan nilaian oleh pihak JPPH. Oleh itu pampasan tanah yang diambil seluas 2,628 meter persegi adalah sebanyak RM11,826,000.00 — see page 53, Vol. 2, ROA.

[9] The appellant objected to the amount of compensation awarded to them by the land administrator by filing Form N requesting the land administrator to refer the matter to the court for its determination pursuant to s 38 of the Act. The appellant contended that the compensation awarded was inadequate on the grounds that the land administrator had failed to consider, amongst others, the said land was purchased at a price of RM10,749,360 on 10 September 2013 (principle of equivalence), potentialities, business compensation, relocation basis, extinguishment basis and replacement costs basis.

[10] The learned High Court judge sat with two assessors to determine the adequacy of the compensation payable to the appellant. After hearing the evidence and submissions of parties, the land reference court allowed the appellant's objection in part in respect of the current market value of the said land which was increased from RM4,500 to RM5,000 per sqmt. The land reference court allowed an additional award for the sum of RM1,314,000 to be paid to the appellant. Other claims by the appellant was rejected.

[11] The learned judge in his grounds of decision dated 13 May 2019 decided that:

> [10] *Untuk tujuan pencerahan, keputusan Mahkamah untuk menaikkan nilaian tanah pemohon daripada RM4,500.00 smp kepada RM5,000.00 smp dibuat setelah mendapatkan pandangan dan nasihat daripada pengapit-pengapit. Pengapit-pengapit sebulat suara mencadangkan harga nilaian RM5,000.00 smp yang mana pada pandangan mahkamah adalah wajar dan munasabah berdasarkan kaedah perbandingan yang digunakan semasa mengemukakan pandangan*. (Emphasis added)

[12] Before us, learned counsel for the appellant submitted that the appellant was not compensated for his true loss as there was no compensation for the potentialities of the said land. Thus, learned counsel argued that there was no compliance with the principle of equivalence as decided by the Federal Court in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561; [2017] 5 CLJ 526.

[13] Learned counsel further submitted that the actual cost for purchasing the said land duly incurred by the appellant should include the late interests paid to the seller as well as the interest for the bank loan. These interest element ought to be compensated under the same principle of equivalence.

[14] Finally, learned counsel argued that failure by the land administrator and the learned High Court judge to complied with the principle of equivalence by not considering potentialities of the said land and the interests element amount to a failure to adhere to the applicable laws and was acted in ultra vires of art 13 of the Federal Constitution.

[15] Now, art 13 of the Federal Constitution provides:

> 13 Rights to property
>
> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[16] There is no doubt that the Act is a legislation that empowers a state authority to deprive a person of his property. Thus, the provisions of the Act

must be strictly followed and complied with or otherwise the land acquisition exercise is not in accordance with the law. The Act is meant to safeguard the constitutional right to property under art 13 of the Federal Constitution. The Act prescribes the procedure to be followed by the state authority for the land acquisition exercise, including the determination of the fair and reasonable amount of compensation to be paid to land owners and other affected parties. We are of the view that the provisions of the Act must be interpreted in favour of the land owners and other persons affected by the acquisition exercise of the property.

[17] After perusing the appeal records and the issues ventilated before us by both parties in their oral and as well as in their written submission, we are of the view that the appellant's appeal hinges on the amount of compensation. The appellant was not happy with the quantum awarded by the land administrator which was increased by land reference court not up to their expectation. Their grievances was on their allegation that the price of the said land paid by them and interest element were not taken into consideration in determining the award.

[18] The argument advanced by the learned assistant state legal advisor for the respondent is that, to which we agreed, the burden is on the appellant to make out a prima facie case of inadequate award. Only when the appellant succeeds in doing so would the respondent be called upon to introduce their evidence; otherwise the appellant's case must fail and the land administrator's award should stand (see *Ong Yan & Anor v Collector of Land Revenue, Alor Gajah, Malacca* [1986] 1 MLJ 405).

[19] Learned counsel for the appellant relied heavily on the Federal Court decisions in *Semenyih Jaya Sdn Bhd*; *Ng Tiou Hong v Collector Of Land Revenue, Gombak* [1984] 2 MLJ 35; [1984] 1 CLJ Rep 289; *Malakoff Bhd v Pemungut Hasil Tanah Seberang Perai Utara, Butterworth* [2005] 2 MLJ 229; [2005] 1 CLJ 365; and *Pentadbir Tanah Daerah Kota Tinggi v Siti Zakiyah bte Sh Abu Bakar & Ors* [2006] 2 MLJ 426; [2005] 4 CLJ 630 to support his argument.

[20] Learned counsel for the appellant cited to us a few passages from *Semenyih Jaya*'s case on points of law regarding the issue on what was an adequate compensation which merit our reproduction below:

> [197] Article 13(2) is a constitutional safeguard to land owners to receive 'adequate compensation' upon acquisition.
>
> [198] But what is adequate compensation for a person who has been deprived of his or her property? The term 'adequate compensation' is not defined in the Act. In *Pentadbir Tanah Daerah Gombak v Huat Heng (Lim Low & Sons) Sdn Bhd* [1990] 3 MLJ 282; [1991] 1 CLJ 16; [1991] 1 CLJ Rep 356, the Supreme Court held that 'the basic principle governing compensation is that the sum awarded should, as far

as practicable, place the person in the same financial position as he would have been in had there been no question of his land being compulsorily acquired' (see '*Compulsory Acquisition and Compensation*' by Sir Frederick Corfield QC and RJA Carnwath).

[199] The above principle is known as the principle of equivalence. By this principle, the affected landowners and occupants are entitled to be compensated fairly for their loss. But they should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land.

...

[209] It is our finding that the principle of equivalence requires that the appellant is compensated for his true loss. This must include compensation for loss of its business. Applying the principle laid down in *Shun Fung Ironworks Ltd* (supra), such claim falls under the heading 'market value' of the land as stated in para 2(a) and para. 1 of the First Schedule.

[210] We are of the view that the value of the land in its actual condition together with its profit value should be considered in determining market value of the acquired land. This was also decided by the Federal Court in *Ng Tiou Hong v Collector Of Land Revenue, Gombak* [1984] 2 MLJ 35; [1984] 1 CLJ Rep 289 where Syed Agil Barakbah FJ held that:

> ... its potentialities must be taken into account. The nature of the land and the use to which it is being put at the time of acquisition have to be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future e.g. the possibility of it being used for building or other developments.

[211] It needs emphasis that the market value rule in para 1 must not be construed rigidly. It is noteworthy that para 1 of the First Schedule itself does not define the term market value. Instead, it enumerates the process of determining market value of the land. Apart from the price of comparable sales of the acquired land in the vicinity, the conditions of the land form a basis in the computation of market value. Thus any restrictions in title, any specification and category in the land use ought to be considered in determining the market value of the land. Similarly, any improvement made by the owner to the land (subject to the restriction imposed in para 1) and the existence of any building on the subject land are also to be considered.

[212] In the present case, what was the actual condition of the appellant's land at the time of acquisition? Clearly, the appellant had already embarked on commercially developing the land into an industrial area. Thus, the appellant's loss of business is to be incorporated in the development value of profit value of the land forming part of the market value of the acquired land. In determining market value of the land as stated in para 2(a) of the First Schedule, the land administrator and the court must give consideration to the profit value of the land at the time of acquisition.

[213] It can be seen that the Act is sufficiently flexible to allow for the determination of equivalent compensation in the circumstances of the present case. Compensation should be for loss of any land acquired, for buildings and other improvements to the land acquired, for the reduction in value of any land retained as a result of

acquisition and for any consequential losses to the livelihoods of the owners and occupants. A rigid application of detailed provisions may result in landowners and occupants not being compensated for losses that are not expressly identified in the legislation.

[214] A pertinent observation is that para 1(1A) in the First Schedule was inserted by Act A999 so as to allow flexibility when assessing the amount of market value of a land acquired.

Paragraph 1(1A) reads:

> In assessing the market value of any schedule land, the valuer may use any suitable method of valuation to arrive at the market value provided that regard may be had to the prices paid for the recent sales of lands with similar characteristics as the scheduled land which are situated within the vicinity of the scheduled land and with particular consideration being given to the last transaction on the scheduled land within two years from the date with reference to which the scheduled land is to be assessed under subparagraph (1).

[215] In view of the above, although comparable sales in the vicinity of the acquired land is an important component in the computation of market value of an acquired land, 'any suitable method of valuation' is also allowed. Therefore, any appropriate method that serves to provide equivalent compensation to affected persons can be applied. Such methods may include compensation paid on the basis of replacement costs.

[21] From the above excerpt, learned counsel for the appellant submitted that in determining profit value and market value, potentialities must be taken into account together with the likelihood to which it is reasonably capable of being put to use in the future eg the possibility of it being used for building or other developments. Learned counsel further submitted that the land administrator and the learned High Court judge have never put their minds to the question of potentialities of the said land.

[22] How assessment of compensation arising out of an acquisition was explained by the Federal Court in *Semenyih Jaya*'s case as follows:

> [200] An assessment of compensation arising out of an acquisition is governed by the First Schedule to the Act. Based on the First Schedule, the quantum of compensation is based on the market value of the land acquired plus the consequential loss suffered by the affected landowners and occupants. Thus, an assessment of compensation is underpinned by the principle of equivalence. The affected landowners and occupants are entitled not only to the market value of the land but also to compensation for the loss and disturbance occasioned, arising out of the acquisition. For a claim to be allowed, it must fall within the heads of compensation listed in para 2 of the First Schedule.
>
> [201] Based on para 2 of the First Schedule there are six matters (heads of compensation) which are to be taken into consideration when compensation is determined. The heads of compensation are: (a) market value; (b) increase in value of the other land of the person from whom land is acquired; (c) damage caused by

A severance from any other land of the person from whom the land is acquired; (d) injurious affection; (e) forced change of residence or place of business due to acquisition; and (f) where only part of the land is acquired, any undertaking given by the State Authority for the provision of facilities for the portion left unacquired.

B **[23]** After perusing learned High Court judge's grounds, we disagreed with learned counsel's submission that current market value and potentialities of the said land was never considered by the learned High Court judge. These could be distilled from the following paragraphs of the learned High Court judge's judgment which we reproduce below:

C

> [4] Setelah meneliti dan menimbang Rekod Bantahan, laporan-laporan penilaian yang dikemukakan penilai-penilai pemohon dan responden, jawapan-jawapan kepada laporan penilaian, hujahan-hujahan yang dikemukakan peguam pemohon dan Peguam Persekutuan yang mewakili responden serta setelah mendengar pandangan-pandangan daripada kedua-dua pengapit, *mahkamah telah memutuskan untuk membenarkan sebahagian bantahan pemohon. Nilaian pasaran semasa tanah tersebut telah dinaikkan daripada RM4,500 semeter persegi (smp) kepada RM5,000 smp. Jumlah award tambahan adalah sebanyak RM1,314,000 diberikan kepada pemohon. Lain-lain tuntutan pemohon ditolak.*
>
> ...
>
> [10] Untuk tujuan pencerahan, *keputusan mahkamah untuk menaikkan nilaian tanah pemohon daripada RM4,500 smp kepada RM5,000 smp dibuat setelah mendapatkan pandangan dan nasihat daripada pengapit-pengapit. Pengapit-pengapit sebulat suara mencadangkan harga nilaian RM5,000 smp yang mana pada pandangan mahkamah adalah wajar dan munasabah berdasarkan kaedah perbandingan yang digunakan semasa mengemukakan pandangan.*
>
> ...
>
> [16] Selain itu, keterangan juga menunjukkan bahawa tanah tersebut telah disewakan kepada 2 syarikat lain yang menjalankan perniagaan menjual kereta. Sila lihat perenggan 5(a) Afidavit Pemohon di Lampiran 12. Di perenggan 5(b) pemohon menyatakan bahawa penyewaan tersebut adalah untuk jangka pendek kerana *pemohon berhasrat untuk membina bangunan komersial bertingkat di atas tanah tersebut*. Jelasnya, pemohon tidak menjalankan apa-apa aktiviti perniagaan di atas tanah tersebut pada masa pengambilan. Berdasarkan fakta tersebut, sudah tentulah tuntutan pemohon tidak boleh dipertimbangkan menurut peruntukan di bawah subperenggan 2(e) Jadual Pertama APT 1960. (Emphasis added.)

[24] It is clear to us from the learned High Court judge's judgment that the current market value based on the comparable transactions was considered and accepted by the judge. The learned judge did aware and had considered about the proposed future development of the said land. The learned High Court judge did not erred in his findings.

[25] We agreed with the learned High Court judge findings that the appellant's objection and appeal to this court nothing but purely on the issue of quantum of compensation. On this point, learned High Court judge reiterates his view:

> [8] Apakah yang dimaksudkan dengan perkara yang hendak dirayu di perenggan (b) Notis Rayuan? Sekiranya rayuan tersebut adalah ke atas jumlah pampasan nilaian tanah, maka rayuan pemohon dihalang di bawah subseksyen 40D(3) APT 1960. Walau pun keputusan Mahkamah Persekutuan di dalam kes *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 mendapati bahawa s 40D APT 1960 adalah tidak sah kerana bertentangan dengan peruntukan Perlembagaan Persekutuan, pada masa yang sama telah mengekalkan peruntukan subseksyen 40D(3) APT 1960 ...
>
> [9] Jelasnya, keputusan kes *Semenyih Jaya* tidak membatalkan peruntukan subseksyen 40D(3) APT 1960. Dengan itu, pemohon dihalang daripada mencabar keputusan Mahkamah Tinggi yang membuat keputusan ke atas jumlah pampasan kecuali di atas persoalan undang-undang. Oleh kerana Notis Rayuan pemohon tidak menyatakan sebarang persoalan undang-undang yang hendak dibangkitkan, maka rayuan pemohon berhubung dengan jumlah award pampasan tambahan adalah dihalang subseksyen 40D(3) APT 1960. Setelah diteliti, perenggan 4(a), (g), (j), (k), (l), (m) dan (n) Alasan Bantahan adalah berkait dengan jumlah award pampasan tambahan yang telah diputuskan oleh Mahkamah.

[26] On the issue of the right of appeal and on the impugned s 40D of the Act, the Federal Court explained at great length as follows in extenso:

> [126] As regards the present s 40D of the Act, since we have declared it to be unconstitutional, our decision is to have prospective effect. The doctrine of prospective overruling will apply here so as not to give retrospective effect to the declaration made.
>
> [127] As a matter of principle, a court judgment is 'retrospective in effect unless a specific direction of prospectivity is expressed'. This principle has been decided by the Federal Court in *Public Prosecutor v Mohd Radzi Abu Bakar* [2005] 6 MLJ 393; [2006] 1 CLJ 457.
>
> ...
>
> [135] A perusal of the provisions limiting appeals under the Act is called for here.
>
> Subsection 40D(3) of the Act reads:
>
> > (3) Any decision made under this section is final and there shall be no further appeal to a Higher Court on the matter.
>
> Subsection 49(1) of the Act and its proviso reads:
>
> > (1) Any person interested, including the land administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
> >
> > Provided that where the *decision comprises an award of compensation* there shall be

A no appeal therefrom. (Emphasis added.)

[136] We take the position that the word 'decision' mentioned in sub-s 40D(3) of the Act flows from the decision-making process described in its preceding subsections which we have held to be unconstitutional. However our finding of unconstitutionality of s 40D of the Act is because of the decision-making process only, ie, the determination of the amount of compensation by the assessors. No more no less.

[137] The provision limiting appeal is in our view, a separate and distinct issue. It does not contribute to the invalidity of sub-s 40D(3) of the Act. To hold otherwise would be contrary to sub-s 68(1)(d) of the Courts of Judicature Act 1964 (CJA). The law recognises the power of the Legislature to enact laws limiting appeals by declaring the finality of a High Court order. Subsection 68(1)(d) reads:

No appeal shall be brought to the Court of Appeal in any of the following cases:

(a)–(c); and

(d) Where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

[138] An important component in the issue of the bar to appeal in sub-s 40D(3) of the Act is the proviso to sub-s 49(1). Paragraph 25 of the explanatory statement to the Bill for Act A999 states that sub-s 49(1) was amended so as to include the provision limiting appeals as a result of the introduction of sub-s 40D(3) of the Act.

[139] Hence, despite the fact that s 40D has been declared unconstitutional, its decision is material in the context of the proviso to sub-s 49(1) of the Act. Subsection 40D(3) of the Act is a finality clause. It declares that any decision made by the land reference court under s 40D ie, on the amount of compensation is 'final'. Consequently, a decision made under s 40D of the Act ends in the High Court. The law restricts appeals to be brought against the 'amount of compensation'.

...

[152] In our view, what needs clarification here is the phrase 'against the order of compensation made by the High Court' which was used by the Federal Court, both in *Calamas* (supra) and *Syed Hussain* (supra). The question is whether such expression denotes any decision issued by the High Court with regard to compensation.

[153] In our view, this does not appear to be the case. It is obvious that the subject matter of the appeals in both cases was purely on the inadequacy of quantum of compensation awarded by the High Court. It was on this basis that Hashim Yussof FCJ in *Calamas* (supra), concluded that:

It would appear that from the grounds of judgment of the Court of Appeal (at p. 16 appeal record volume I), the issue put forward before the court was whether the learned judge was correct in determining the *amount of compensation* to be awarded to the appellant. (Emphasis added.)

... I am of the view that the said section clearly stipulates that 'Any decision made

under this section is final and there shall be no further appeal to a higher court on the matter'. A

It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal I do not see anything ambiguous in ss 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order of compensation issued by the learned trial judge. B

[154] The position is reinforced by the restrictive approach taken by the Federal Court in the interpretation of the proviso to sub-s 49(1) of the Act. In *Syed Hussain* (supra), His Lordship Raus Sharif PCA held that because of its legislative background, the proviso to sub-s 49(1) of the Act must be read together with the provision of sub-s 40D(3) of the Act. The intention of Parliament is clear. There can be no appeal against the decision of the High Court on the amount of compensation. The relevant part of the judgment reads: C

Thus while section 49(1) of the LAA allows any interested person to appeal against the decision of the High Court to the Court of Appeal, section 40D appears to have restricted the ambit of such an appeal. Section 40D(3) clearly provides that any decision as to the amount of compensation award shall be final and there shall be no further appeal to the higher Court on the matter. This non-appealable provision of section 40D(3) is further reinforced by the proviso of section 49(1) which reads: D E

> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

Historically speaking, s 40D is a new section introduced by the Land Acquisition (Amendment) Act 1997 (Amendment Act 1997). The Amendment Act 1997 had also inter alia amended the proviso of s 49(1) of the LAA. F

[155] To sum up, the proviso to sub-s 49(1) of the Act does not represent a complete bar on all appeals to the Court of Appeal from the High Court on all questions of compensation. Instead, the bar to appeal in sub-s 49(1) of the Act is limited to issues of fact on ground of quantum of compensation. Therefore, an aggrieved party has the right to appeal against the decision of the High Court on questions of law. G

[27] We observed that in *Semenyih Jaya*'s case, the Federal Court remitted the matter back to the High Court for a proper determination of the issues listed at para [224] of the judgment as follows: H

[224] For all the above reasons, this appeal is allowed with no order as to costs and we order that the case be remitted to the High Court for a proper determination of issues as found herein. It is ordered that:

(a) By s 40A, the matters are to be heard before a single judge. The court shall appoint two assessors to assist the judge in determining the objection made by the appellant against the amount of compensation awarded by the land administrator. I

(b) At the end of the proceedings, the assessors are required to give their opinions in writing as to the appropriate amount of compensation to be

awarded in this case pursuant to s 40C of the Act. The assessors must give due consideration to all the heads of compensation claimed by the appellant under the Act.

(c) The opinion of the assessors are to be recorded by the judge. The judge is to exercise his mind in determining the amount of compensation to be awarded to the appellant, based on the principle of equivalence.

(d) The provisions of sub-s 36(4) of the Act are to be given full effect. The judge shall not be bound to conform to the opinions of the assessors. In the event of any disagreement between the assessors with regard to the amount of compensation, the judge may elect to consider which of the two opinions in his view is appropriate in the circumstances of the case. The judge is also at liberty to depart from the opinion of either of the assessors and decide on the reasonable amount of compensation to be awarded to the appellant by giving reasons for so doing.

[28] As we alluded to earlier, we did not find any appealable error on the part of the learned High Court judge. From the records, we found that the land reference court had properly performed and determined all the issues as listed above by the Federal Court.

CONCLUSION

[29] For the reasons above, we find no merits in the appeal, the appeal was dismissed with cost of RM10,000 subject to payment of allocatur fees. The decision of the High Court is affirmed.

Appeal dismissed with costs of RM10,000 and order of High Court affirmed.

Reported by Nabilah Syahida Abdullah Salleh